

July 2008

## **VOLUNTARY DISCLOSURE PROGRAM**

The Alabama Department of Revenue (Department) does not statutorily provide guidelines for taxpayers who wish to voluntarily come forward and comply with Alabama tax laws. However, the Department has provided a voluntary disclosure program to encourage businesses that are not in compliance with the Alabama tax laws to come forward voluntarily to register and bring their accounts into compliance. The Department offers the voluntary disclosure program as a *service* to the taxpayer. In order to be considered for the voluntary disclosure program, the applicant must not have been contacted by the Department or an agent of the Department, such as the Multistate Tax Commission, nor filed a tax return for seven years prior to the initial written request for voluntary disclosure. The Department considers contact and the filing of returns on a tax-by-tax basis. For example, if a taxpayer is registered to collect, filed a return for, or has been contacted about one type of tax, this will not prohibit the taxpayer from entering the program for other tax types.

### ***Taxes Subject to Disclosure Agreements***

- The Department will enter into an agreement for the remittance of corporate income taxes, business privilege taxes and corporate shares taxes (beginning January 1, 2000), rental taxes, and sales and use taxes.
- The Department does not enter into agreements for individual income tax liabilities, unless the taxpayer is a nonresident shareholder and the S-corporation will file composite returns on their behalf.
- In general, this program is not open to taxpayers who have at sometime filed returns and/or qualified to do business and have fallen behind in their filing responsibilities.
- The Department agrees to waive late file and late payment penalties and the taxpayer will be billed directly for interest.

### ***Nexus Determination***

The Department limits prior period exposure to three years or to the date nexus was established in the State. In the event that nexus was arguable or if there is no evidence that nexus existed during the three-year look back period the representative may proceed through the normal registration process. However, the burden of proof is on the taxpayer.

### ***Initial Contact***

- Initial contact must be made in a written request.
- The taxpayer can come forward anonymously and disclose their name upon signing the agreement.
- The Department will in no way seek to identify those taxpayers who wish to remain anonymous.
- To remain anonymous when making initial contact, the taxpayer may engage representation from a tax preparer, accountant or attorney.

In order to be considered for the voluntary disclosure program, applicants must submit a letter that includes the following information:

1. The nature of business the taxpayer conducts in Alabama.
2. Why the client has not timely filed and remitted taxes.
3. The type of entity formation (i.e., s-corporation, LLC, etc.). The State must be notified if a corporation is an s-corporation prior to the signing of a voluntary disclosure agreement.
4. The type of tax the taxpayer will file and remit.
5. A statement, if true, that the client has not been contacted by the Department or an agent of the Department, for seven years prior to the initial written request for voluntary disclosure, nor are they currently under audit, nor have they filed Alabama tax returns of this type within the last seven years. (A contact includes, but is not limited to, with regard to potential liability for the type of tax in question: receipt of a nexus questionnaire, a telephone call, an audit or notice of audit, payment of tax, registration for tax, registration with the Secretary of State, request for extension of time to file, making a payment of estimated tax, the filing of a return, and non-compliance issued in response to an application for a Certificate of Good Standing by the taxpayer, or on behalf of the taxpayer).
6. The tax year end of the taxpayer, whether calendar or fiscal year end. If the taxpayer has a fiscal year end, please specify the month and date of each year end for the look-back period.

7. A statement of whether or not the taxpayer has collected and failed to remit Sales and Use tax or Withholding tax in the past. If the taxpayer has collected such taxes in the past, state the tax periods in which such tax was collected.

8. A statement addressing business privilege, income, sales and use, and withholding taxes must be included. For example, taxpayers requesting a voluntary disclosure agreement for sales and use tax and business privilege tax should justify why a voluntary disclosure agreement is not being requested for income tax, as well.

### ***Responsibility of the Taxpayer***

To participate in the voluntary disclosure program, the taxpayer must:

- Enter into a binding agreement with the Department as drafted by the Director of Tax Policy for at least a three-year look-back period.
- File all returns and forms for the period(s) specifically outlined in the agreement within 90 days of the effective date of the agreement.
- Remit all tax and interest due as agreed upon.

### ***Three-Year Look-Back Period***

The Voluntary Disclosure Program has a mandatory three-year look-back period.

The three-year look-back period is calculated by determining the last three tax years (or 36 months) which are past due. For example, Corporate Income tax returns are due two-and-one-half months after tax year end. If the Department receives a VDA request in July 2006 for Corporate Income Tax on behalf of a company that has a fiscal year end in June 2006, the look-back period would not include the tax year ending June 2006 since this return is not due until September 2006. In this case, the look-back period would include tax years ending June 2003-2005.

If the taxpayer has collected Sales or Use tax without remitting them, the look-back period will be extended to include all periods in which Sales and Use and/or Withholding tax was collected.

The effective date of the Agreement is established as the date that the Department received the initial contact.

### ***Disqualification***

The taxpayer may be disqualified and the agreement rendered null and void if any one of the following is found:

- Previous contact of any kind by the Department or an agent of the Department within seven years prior to the initial written request for voluntary disclosure. This includes returns filed for the tax types included in the agreement for tax periods beginning before the look-back period. (A contact includes, but is not limited to, with regard to potential liability for the type of tax identified in the agreement: receipt of a nexus questionnaire, a telephone call, an audit or notice of audit, payment of tax, registration for tax, registration with the Secretary of State, request for extension of time to file, making a payment of estimated tax, and filing of a return, and non-compliance issued in response to an application for a Certificate of Good Standing by the taxpayer, or on behalf of the taxpayer).
- **NOTE: If a taxpayer is considering, or in the process of, entering Alabama's Voluntary Disclosure Program, they should make sure not to initiate any kind of contact or filing, e.g. registering with the Secretary of State or filing an extension, until the request for Voluntary Disclosure has been received by this office.**
- The taxpayer is currently under audit by the Department or an agent of the Department.
- Misrepresentation of any facts set forth in the initial letter of contact.
- Failure by the taxpayer to comply with the terms of the agreement.

***Confidentiality***

The making and terms of the agreement will not be actively discussed with any taxing authorities or any state or governmental authority or with any person or party, except as such disclosures are in compliance with the State's confidentiality laws. The Department has certain exchange of information agreements in place that allow it to exchange tax information with other taxing authorities. The information contained in the agreement may be released as specified in the exchange of information agreements, either through a request for general information or through a request for specific information.

***Written Requests/Proposals should be addressed to:***

Alabama Department of Revenue  
Voluntary Disclosure Program  
50 North Ripley Street  
Room 4131  
Montgomery, Alabama 36132

**NON-USPS carrier should be sent to Zip Code 36104**

If you have any questions regarding voluntary disclosure, please contact Brenda Taylor, Voluntary Disclosure Administrator, at (334) 353-9577 or [brenda.taylor@revenue.alabama.gov](mailto:brenda.taylor@revenue.alabama.gov).